In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 1108

INTERNATIONAL UNION OF ELECTRICAL, RADIO, AND MACHINE WORKERS, AFL–CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD AND GENERAL ELECTRIC CO.

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

Petitioner, International Union of Electrical Workers, seeks review of orders of the court of appeals which (1) dismissed its petition to review an order of the National Labor Relations Board and (2) denied it intervention in a proceeding to enforce that order brought by the Board against the General Electric Co. The underlying facts are as follows:

Upon charges filed by petitioner Union, the Board found that the Company refused to bargain in good faith with the Union, thereby violating Sections 8(a) (5) and (1) of the National Labor Relations Act.[1]

[1] The Board based its holding "upon our review of the [Company's] entire course of conduct, its failure to furnish relevant information, its attempts to deal separately with locals and to bypass the national bargaining representative, the man-

The Board ordered the Company, *inter alia*, to cease and desist from refusing to bargain in good faith with the Union, from refusing to furnish the Union with relevant information, from attempting to bargain directly with locals of the Union, and from in any like or related manner interfering with its employees in the exercise of their bargaining rights. The Board overruled the request of the Union, contained in its exceptions to the trial examiner's report (see Pet. 9–10), that certain specific acts of the Company should themselves be held to constitute unfair labor practices, and that the prohibitions of the order should be enlarged and made more specific. 150 NLRB No. 36.

Both the Company and the Union petitioned for review of the Board's order under Section 10(f) of the Act (29 U.S.C. 160(f)), and the Board filed a cross-petition for enforcement under Section 10(e) (29 U.S.C. 160(e)).[2] The Union, in its petition (par.

ner of its presentation of the accident insurance proposal, the disparagement of the Union as bargaining representative by the communication program, its conduct of the negotiations themselves, and its attitude or approach as revealed by all these factors." 150 NLRB No. 36, slip dec., p. 6.

[2] The Union filed its petition in the Court of Appeals for the District of Columbia Circuit, and the company field its petition in the Seventh Circuit. Unable to determine which of these proceedings was first instituted, within the meaning of 28 U.S.C. 2112(a), the Board filed its petition in the Second Circuit, the place where the unfair labor practices occurred, and requested the other circuits to transfer the other petitions there. Both the District of Columbia and the Seventh Circuits made such transfers.

3), asserted that it was a "person aggrieved"[3] because:

> The findings and order of the Board, to the extent that they failed to find certain violations of the Act, as amended, and to order the Company to cease and desist therefrom and to take additional affirmative action, are contrary to substantial evidence on the record before it, and applicable law.

In its answer to the Union petition, the Board, although denying the allegation of error, conceded that the Union was a "person aggrieved" within the meaning of Section 10(f) (Ans., par. 2).

The Board moved to consolidate the three proceedings. The Union, in turn, moved to intervene in the Board's enforcement proceeding against the Company. Although the Board did not oppose such intervention, the Company did oppose. In addition, the Company moved to intervene in the Union's review proceeding, urging that it should be dismissed because the Union's claim that it was aggrieved by the Board's order was frivolous.

The court of appeals granted the Company's motion to intervene in the Union's review proceeding and dismissed that proceeding (Pet. 15). The court denied the Union's motion to intervene in the Board's enforcement proceeding against the Company, but granted the Union leave to file a brief *amicus curiae* (Pet. 14).

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[3] Section 10(f) provides that:

"Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order * * *."

The first question presented is whether the charging party before the Board is entitled to intervene in a judicial proceeding brought by the Board to enforce an unfair labor practice order. This is the same issue that is before the Court in *United Automobile Workers* v. *Fafnir Bearing Co.*, No. 883, this Term, certiorari granted March 29, 1965.[5] The only difference between the cases is that in *Fafnir* the charging party was not also itself seeking review of the Board's order. In these circumstances the Court should either grant the petition on this question or hold it pending the decision in *Fafnir*.

The second question in the petition is whether, where the Board's order fails to grant some of the relief that the charging party seeks, the latter is a "person aggrieved" by the order under Section 10(f) of the Act, and entitled to seek judicial review thereof. It is doubtful, however, whether this question actually is involved in this case. The basis of the Company's motion to dismiss the Union's petition for review was not a general challenge to the standing of a charging party to contest the adequacy of the relief granted by the Board, but only the narrow claim that, on the particular facts of this case, the respects in which the Union sought to broaden the Board's decision and order were so insubstantial that the Union was not "aggrieved" by the Board's failure to do so. There can be no doubt that, if the Board fails to grant significant relief which the charging party seeks, the

[5] *United Automobile Workers* v. *Scofield*, No. 650, this Term, certiorari granted, January 18, 1965, presents the question whether the respondent before the Board is entitled to intervene in a review proceeding brought by the charging party.

latter is a "person aggrieved" who has standing to challenge the order under Section 10(f). In these circumstances, and since the court of appeals did not state the reasons for its action, it seems only reasonable to conclude that the court accepted the Company's claim that the differences between the order proposed by the Union and that entered by the Board were so insignificant that the Union was not really "aggrieved." Although the Board believes that the court may have erred in concluding that the Union was not "aggrieved," the court's decision appears to rest on the facts of the particular case, and thus presents no issue warranting review by this Court.

Respectfully submitted.

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